

REPRESENTATIVE FOR PETITIONER:
Rex D. Hume, Property Tax Consultant, Uzelac & Associates, Inc.

REPRESENTATIVES FOR RESPONDENT:
Dorothy Joest, Pigeon Township Deputy Assessor
Tammy Elkins, Vanderburgh County Hearing Officer

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

In the matter of:

NORTH SIDE NATIONAL BANK,)	Petition No.: 82-029-95-1-4-00773
)	
Petitioner)	County: Vanderburgh
)	
v.)	Township: Pigeon
)	
VANDERBURGH COUNTY)	Parcel No.: 1136025056007
BOARD OF REVIEW AND THE)	
PIGEON TOWNSHIP ASSESSOR,)	Assessment Year: 1995
)	
Respondents)	
)	

Appeal from the Final Determination of Vanderburgh County
Board of Review

[November 26, 2002]

FINAL DETERMINATION

The Indiana Board of Tax Review assumed jurisdiction of this matter as the successor entity to the State Board of Tax Commissioners, and the Appeals Division of the State Board of Tax Commissioners. For convenience of reference, each entity is without distinction hereafter referred to as the "Board".

The Board having reviewed the facts and evidence, and having considered the issues, now finds and concludes the following:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Issues

1. The issues presented for consideration by the Board were:

ISSUE 1 – *Whether the basement perimeter measurement and perimeter to area ratio are correct.*

ISSUE 2 – *Whether an interior finish adjustment is warranted because of less partitioning in the subject structure than the model specifies.*

ISSUE 3 – *Whether additional economic obsolescence is warranted.*

Procedural History

2. Pursuant to Ind. Code § 6-1.1-15-3 Rex Hume, of Uzelac and Associates, Inc., filed a Form 131 petition on behalf of North Side National Bank petitioning the Board to conduct an administrative review of the above petition. The determination of the Vanderburgh County Board of Review was issued on August 2, 1996. The Form 131 was filed on September 3, 1996. September 2, 1996, was Labor Day; therefore, the petition is considered timely filed.

Hearing Facts and Other Matters of Record

3. Pursuant to Ind. Code § 6-1.1-15-4 a hearing was held on August 24, 1999, in Evansville, Indiana before Hearing Officer Mary Kay Fischer.
4. The following persons were present at the hearing:
 - For the Petitioner:
 - Rex D. Hume, Property Tax Consultant.

For the Respondent:

Dorothy Joest, Pigeon Township Deputy Assessor.

Tammy Elkins, Vanderburgh County Hearing Officer.

5. The following persons were sworn in as witnesses and presented testimony:

For the Petitioner: Rex D. Hume

For the Respondent: Dorothy Joest and Tammy Elkins

6. The following exhibits were presented:

For the Respondent:

Respondent's Exhibit 1 – Statement of Issues and Response with attachments:

- a. A copy of the Board of Review final determination.
- b. An exterior photograph of the subject structure.
- c. A plat map of the subject parcel.
- d. A copy of the Board of Review minutes.

Respondent's Exhibit 2 – A copy of the subject property record card.

7. In his testimony, Mr. Hume referenced documents attached to the Form 131 petition (Board's Exhibit A) but did not submit any additional documentary evidence at the Board hearing.

8. The following additional items are officially recognized as part of the record of proceedings:

Board's Exhibit A – Form 131 petition with attachments.

Board's Exhibit B – Notice of Hearing on Petition.

16. Indiana has established a mass assessment system through statutes and regulations designed to assess property according to what is termed “True Tax Value.” See Ind. Code § 6-1.1-31, and 50 Ind. Admin. Code 2.2.
17. True Tax Value does not precisely equate to fair market value. See Ind. Code § 6-1.1-31-6(c).
18. An appeal cannot succeed based solely on the fact that the assessed value does not equal the property’s market value. See *State Board of Tax Commissioners v. Town of St. John*, 702 N.E. 2d 1034, 1038 (Ind. 1998) (*Town of St. John V*).
19. The Indiana Supreme Court has said that the Indiana Constitution “does not create a personal, substantive right of uniformity and equality and does not require absolute and precise exactitude as to the uniformity and equality of each individual assessment”, nor does it “mandate the consideration of whatever evidence of property wealth any given taxpayer deems relevant”, but that the proper inquiry in tax appeals is “whether the system prescribed by statute and regulations was properly applied to individual assessments.” See *Town of St. John V*, 702 N.E. 2d at 1039 – 40.
20. Although the Supreme Court in the *St. John* case did declare the cost tables and certain subjective elements of the State’s regulations constitutionally infirm, it went on to make clear that assessment and appeals must continue to be determined under the existing rules until new regulations are in effect.
21. New assessment regulations have been promulgated, but are not effective for assessments established prior to March 1, 2002. See 50 Ind. Admin. Code 2.3.

State Review and Petitioner’s Burden

22. The State does not undertake to reassess property, or to make the case for the petitioner. The State decision is based upon the evidence presented and issues raised during the

hearing. See *Whitley Products, Inc. v. State Bd. of Tax Comm'rs*, 704 N.E. 2d 1113 (Ind. Tax 1998).

23. The petitioner must submit 'probative evidence' that adequately demonstrates all alleged errors in the assessment. Mere allegations, unsupported by factual evidence, will not be considered sufficient to establish an alleged error. See *Whitley Products, Inc. v. State Bd. of Tax Comm'rs*, 704 N.E. 2d 1113 (Ind. Tax 1998), and *Herb v. State Bd. of Tax Comm'rs*, 656 N.E. 2d 1230 (Ind. Tax 1998). ['Probative evidence' is evidence that serves to prove or disprove a fact.]
24. The petitioner has a burden to present more than just 'de minimis' evidence in its effort to prove its position. See *Hoogenboom-Nofzinger v. State Bd. of Tax Comm'rs*, 715 N.E. 2d 1018 (Ind. Tax 1999). ['De minimis' means only a minimal amount.]
25. The petitioner must sufficiently explain the connection between the evidence and petitioner's assertions in order for it to be considered material to the facts. 'Conclusory statements' are of no value to the State in its evaluation of the evidence. See *Heart City Chrysler v. State Bd. of Tax Comm'rs*, 714 N.E. 2d 329 (Ind. Tax 1999). ['Conclusory statements' are statements, allegations, or assertions that are unsupported by any detailed factual evidence.]
26. Essentially, the petitioner must do two things: (1) prove that the assessment is incorrect; and (2) prove that the specific assessment he seeks, is correct. In addition to demonstrating that the assessment is invalid, the petitioner also bears the burden of presenting sufficient probative evidence to show what assessment is correct. See *State Bd. of Tax Comm'rs v. Indianapolis Racquet Club, Inc.*, 743 N.E.2d 247, 253 (Ind., 2001), and *Blackbird Farms Apartments, LP v. DLGF* 765 N.E.2d 711 (Ind. Tax, 2002).
27. The State will not change the determination of the County Board of Review unless the petitioner has established a 'prima facie case' and, by a 'preponderance of the evidence' proven, both the alleged error(s) in the assessment, and specifically what assessment is correct. See *Clark v. State Bd. of Tax Comm'rs*, 694 N.E. 2d 1230 (Ind. Tax 1998), and

North Park Cinemas, Inc. v. State Bd. of Tax Comm'rs, 689 N.E. 2d 765 (Ind. Tax 1997). [A 'prima facie case' is established when the petitioner has presented enough probative and material (i.e. relevant) evidence for the State (as the fact-finder) to conclude that the petitioner's position is correct. The petitioner has proven his position by a 'preponderance of the evidence' when the petitioner's evidence is sufficiently persuasive to convince the State that it outweighs all evidence, and matters officially noticed in the proceeding, that is contrary to the petitioner's position.]

Credibility of Certain Evidence

28. The State's position is that it has the right to make general inquiry regarding, and to consider, the method by which a witness is compensated. Information about the witness's fee can be relevant and necessary in order to evaluate the potential partiality of the witness. A contingent fee arrangement may be considered to inherently affect the objectivity of a witness. The State believes it appropriate to consider the potential of such an arrangement to improperly motivate the witness and adversely affect the reliability of the testimony. It is for these reasons that the State will consider the method of witness compensation in the process of determining the credibility and weight to be given to testimony of a witness whose fee is contingent on the outcome of the issues that he or she is testifying about. This position is supported by the discussion in the case of *Wirth v. State Board of Tax Commissioners*, 613 N.E. 2d 874 (Ind. Tax 1993).

Discussion of Issues

ISSUE 1: Whether the basement perimeter and perimeter to area ratio (PAR) are correct.

29. The Petitioner contended the correct basement perimeter measurement is one hundred fifty two (152), which would result in a PAR of 11. The local officials assessed the property with a PAR of 24.

30. The applicable rules governing Issue 1 are:
- 50 IAC 2.2-10-2(d), which describes the calculations used to determine the appropriate PAR; and
 - 50 IAC 2.2-10-2(g), which describes the application of the PAR in multistory structures.
31. The relevant facts are:
- a. The subject property is a two-story bank building with five thousand five hundred eighty eight (5,588) square feet per floor over a partial basement. (Hume testimony).
 - b. The property record card shows the area of the basement is one thousand three hundred ninety seven (1,397) square feet with a perimeter of three hundred forty two (342) linear feet and a PAR of 24. (Respondent's Exhibit 1a).
 - c. The Petitioner contended the square footage of the basement is correct, but the perimeter and the PAR used to establish the assessment of the basement are incorrect. (Hume testimony).
 - d. The Petitioner asserted the correct perimeter of the basement is one hundred fifty two (152) linear feet, which indicates a PAR of 11. (Hume testimony; Board's Exhibit A, attachment to the Form 131 petition, page 1).
 - e. The Petitioner claimed the local assessing officials used the first floor perimeter measurement of three hundred forty two (342) for the partial basement, which resulted in a PAR of 24. (Hume testimony).
 - f. The Respondents did not dispute the Petitioner's contention that the correct PAR for the basement area is 11. The Respondents acknowledged that a computer error in the basement PAR is not unusual when the exact basement dimensions are not known. (Joest testimony).

Analysis of ISSUE 1

32. The Petitioner contended the PAR used to establish the assessment of the basement is incorrect. The Petitioner asserted the local officials erroneously used the first floor

perimeter measurement of three hundred forty two (342) for the partial basement, which resulted in a PAR of 24 ($342/1,397 = .2449 \times 100 = 24.49$, or 24).

33. PAR is computed by dividing the total linear feet in the perimeter of a building by the corresponding square foot area; this result is multiplied by 100 and rounded to the nearest whole number. 50 IAC 2.2-10-2(d).
34. In a multistory structure, the PAR must be determined for each floor. 50 IAC 2.2-10-2(g).
35. The Petitioner argued the correct perimeter for the partial basement is one hundred fifty two (152) linear feet. The Petitioner has calculated the proposed PAR at 11 by dividing the basement's actual perimeter measurement by its square footage of one thousand three hundred ninety seven (1,397) square feet ($152/1,397 = .1088 \times 100 = 10.88$, or 11).
36. The Respondents did not dispute the Petitioner's claims that the correct PAR for the basement area is 11, acknowledging that a computer error in the basement PAR is not unusual when the exact basement dimensions are not known.
37. For all the reasons above, it is determined the PAR of 24 for the basement area of the subject building is incorrect. The basement should be priced using a PAR of 11. There is a change in the assessment as a result of this issue.

ISSUE 2: Whether an interior finish adjustment is warranted because of less partitioning in the subject structure than the model specifies.

38. The structure was priced using the bank model from the General Commercial Mercantile (GCM) schedule, 50 IAC 2.2-11-1(6).
39. The Petitioner contended a negative partitioning adjustment is warranted for the bank building because the first floor has significantly less partitioning than the bank model. (Board's Exhibit A, attachment to the Form 131 petition, page 1).

40. The Respondents contended that the partitioning found in the building is typical for this type of structure and therefore conforms to the bank model. (Respondent's Exhibit 1, page 3).
41. The applicable rules governing Issue 2 are:
- a. 50 IAC 2.2-10-6.1, which describes how the reproduction cost is determined based on the base square foot rates of the model;
 - b. 50 IAC 2.2-11, which describes features for each use-type model;
 - c. 50 IAC 2.2-10-6.1(a) and (c), which describe adjustments from the base square foot rate; and
 - d. 50 IAC 2.2-10-6.1(c)(2), which describes the criteria for which unit cost adjustments may be made for variations between the model and the structure being assessed.
42. The relevant facts are:
- a. The Petitioner claimed that a negative adjustment to the base square foot rate should be made because the partitioning in the subject building deviated from the General Commercial Mercantile bank model. (Hume testimony; Board's Exhibit A, attachment to the Form 131 petition, page 1).
 - b. The Petitioner testified there are several open areas and some finished divided space on the first floor of the bank. (Hume testimony).
 - c. A calculation prepared by Mr. Hume was submitted to support the claim that the subject building deviated from the selected model. (Board's Exhibit A, attachment to the Form 131 petition, page 3).
 - d. Mr. Hume contended his calculation demonstrated the following: (1) on the first floor, the bank has three hundred ninety nine (399) linear feet of twelve feet (12') high, two sided drywall painted walls, which equals four thousand seven hundred eighty eight (4,788) surface square feet of partitioning; (2) the reproduction cost of the partitioning is eleven thousand two hundred fifty two dollars (\$11,252); (3) the correct square foot price for partitioning is eight dollars and five cents (\$8.05) per square foot; and (4) twelve dollars and eighty cents (\$12.80) per square foot was charged for the partitioning. The Petitioner argued that, based on this

calculation, the base square foot rate requires a negative adjustment of \$4.75. (Hume Testimony; Board's Exhibit A, attachment to the Form 131 petition, page 3).

- e. The Respondent's contention is that no adjustment is required for partitioning that is typical of a bank. (Respondent's Exhibit 1, page 3).

Analysis of ISSUE 2

- 43. The Board's Regulation, 50 IAC 2.2-6.1, describes how to determine the base rate for commercial and industrial buildings. Initially, a model is selected from one of the association groupings that best represents the structure being assessed. These association groupings are as follows: General Commercial Mercantile (GCM), General Commercial Industrial (GCI), General Commercial Retail (GCR), and General Commercial Kit (GCK).
- 44. The Regulation also provides for a number of use type models, e.g. GCM – Bank. *See* 50 IAC 2.2-11 describing features for each use type model. The reproduction cost of a commercial or industrial building represents the base square foot rate for the model selected less any adjustments applied to the total square footage of the structure. 50 IAC 2.2-10-6.1.
- 45. The commercial and industrial cost schedules, 50 IAC 2.2-11-6, contain two schedules to facilitate adjustments to the base rate. Schedule A provides for adjustments from the base square foot rate such as wall height and construction type. Schedule C adjustments fall into three categories: (1) base price components and adjustments; (2) unit cost adjustments; and (3) unit finish adjustments. 50 IAC 2.2-10-6.1(a) and –(c). The Petitioner contended that it is entitled to an adjustment based on the Unit Cost Adjustment table contained in Schedule C.
- 46. The GCM-Bank model description includes "Frame partitions average cost construction typical of finished divided areas found in banks." 50 IAC 2.2-11-1(6). In order to prevail on this issue, the Petitioner must therefore demonstrate that the partitioning in the

building under appeal is not typical of finished divided areas found in banks. *Deer Creek Developers, Ltd. v. Department of Local Government Finance*, 769 N.E.2d 259 (Ind. Tax 2002).

47. Further, to be entitled to a base rate adjustment from the Schedule C Unit Cost Adjustment table, the Petitioner must submit probative evidence that its building does not contain components listed in the GCM-Bank model. The Petitioner then has the burden of proof to ascertain the cost of each component based on the regulations. *Barth, Inc. v. State Board of Tax Commissioners*, 756 N.E.2d 1124 (Ind. Tax 2001).
48. “[W]hen the issue is whether a building component is typical or of average cost pursuant to the models, one way a taxpayer may present a prima facie case is by submitting probative evidence of real-world improvements.” *Deer Creek Developers, Ltd. v. Department of Local Government Finance*, 769 N.E.2d 259, 264, n. 5 (Ind. Tax 2002).
49. The Petitioner, however, presented no evidence of real-world improvements in support of its argument.
50. Instead, the Petitioner presented a calculation prepared by Mr. Hume (Board’s Exhibit A, attachment to the Form 131 petition, page 3) in support of the claim that the subject building deviates from the GCM-Bank model. The relevant section of the Petitioner’s worksheet is as follows:

Rate	Linear feet	Height	SF	Cost
\$2.35	399	12	4,788	\$11,252
Total Partition Cost from Unit Cost Tables				\$11,252
Total Floor Area (from pricing ladder)				5,588
Cost per square foot floor area				\$8.05
Model partition allowance from Schedule C				\$12.80
Adjustment				(\$4.75)

51. The Petitioner explained this calculation in the following manner:
- “Partitioning is priced from Schedule C by the square foot of partition surface area. The partition tables show the cost of one square foot of partition of each of a variety of construction materials. For example, 2-sided taped and painted drywall on wood studs has a price per square foot of partition surface. To obtain a price for 2-sided drywall on metal studs with standard wallpaper, it is necessary to start with the wood stud price and add for metal studs and add for wallpaper. The table shows those prices, and the partition surface area to which they are applied. The surface area, in turn, is calculated as the product of the length of partitions (linear feet) and the partition height. A partition cost per square foot of floor area is calculated by dividing total partition cost by total floor area. A partitioning adjustment is determined by calculating the cost per square foot of floor area of the partitions in the building and comparing it to the partitioning component of the base rate. The difference is the partition adjustment.” (Board’s Exhibit A, attachment to the Form 131 petition, page 2).
52. As noted, the Petitioner contended that the base rate of the partitioning should be \$2.35. This value was taken from the 2-side, painted drywall component contained in the Schedule C Unit Cost Adjustment table. The Petitioner’s theory behind the selection of this amount is flawed.
53. The unit cost adjustments contained in 50 IAC 2.2-11-6, Schedule C, consist “of unit costs for the most typical interior components...In cases where the assessor believes that the interior construction is not typical of the selected model, he or she may determine the proper costs for the interior components and add or deduct the difference between his or her estimate and the cost included in Schedule C.” 50 IAC 2.2-10-6.1(c)(2).
54. Therefore, Schedule C does not identify the entire cost of differing types of partitions. Instead, it assigns cost only to various possible components that may be found in partitioning.

55. For example, the cost of partitions included in the base price of the GCM-Bank model is \$12.80. However, none of the individual partitioning components identified in the Schedule C Unit Cost Adjustments table are valued at \$12.80. Instead, most of the values range from \$2.25 to \$9.65. Only the clear glass, full height component (\$18.95) is valued at more than \$12.80.
56. As the Petitioner correctly acknowledges, the total value of components present in the property under appeal must be determined: “For example, 2-sided taped and painted drywall on wood studs has a price per square foot of partition surface. To obtain a price for 2-sided drywall on metal studs with standard wallpaper, it is necessary to start with the wood stud price and add for metal studs and add for wallpaper.” (Board’s Exhibit A, attachment to the Form 131 petition, page 2).
57. The Petitioner, however, may not assume that “typical” GCM-Bank partitioning includes just the limited partitioning components identified in the Schedule C Unit Cost Adjustment table, add only the values of those components in the table that are also present in the Petitioner’s property, and then conclude that this sum represents the total cost of the partitioning in the bank under appeal.
58. The square foot cost included in Schedule A for the partitioning adjustment may also include components not listed in the Unit Cost Adjustment table in Schedule C.
59. For example, the GCM association grouping also includes a model for an auto service center. The model describes the partitioning in this structure as “8” concrete block partitions painted 2 sides, and hollow metal doors.” 50 IAC 2.2-11-1(4). Other GCM models also contain doors in the description of partitions (e.g., car wash [50 IAC 2.2-11-1(8)]; health club [50 IAC 2.2-11-1(15) & (16)]; and ice rink [50 IAC 2.2-11-1(21)]). Doors, however, are not included in the partitioning components identified in the Unit Cost Adjustment table in Schedule C.
60. Also, the GCI association grouping includes partitioning components such as “metal service and fire doors” (power generating plant [50 IAC 2.2-11-2(14) & (15)]) and

“single leaf hollow metal door” [50 IAC 2.2-11-2(33)]. These partitioning components do not appear in the Unit Cost Adjustment table in Schedule C.

61. Similarly, the GCR association grouping includes partitioning descriptions that identify components such as “hollow plastic interior doors” (apartment [50 IAC 2.2-11-3(2) & (3)]) and “sound deadening board” (dining lounge [50 IAC 2.2-11-3(4), (5) & (6)]). Neither of these partitioning components is included in the Unit Cost Adjustment table in Schedule C.
62. The partitioning components contained in the Unit Cost Adjustment table in Schedule C are therefore not all inclusive of components that may be included in the square foot costs for partitioning contained in Schedule A. Rather, this table reflects the costs of the “most typical interior components” of partitioning included in all of the models. 50 IAC 2.2-10-6.1(c)(2).
63. The Petitioner’s analysis, however, failed to establish which components are present in partitioning “typical of finished divided areas found in banks.” 50 IAC 2.2-11-1(6). Without identifying the components contained in the “typical” partitioning in the GCM-Bank model, the Petitioner has not identified the manner in which the property under appeal deviates from the model. The Petitioner’s unsubstantiated conclusions concerning components that are typical do not constitute probative evidence. *Whitley*, 704 N.E. 2d at 1119.
64. Further, in the appeal hearing at the County Board of Review, the Petitioner concluded that a partitioning adjustment of \$6.40 was appropriate. (Board’s Exhibit A, attachment to the Form 131 petition, letter dated June 19, 1996). The Petitioner offered no explanation of the difference between the amount of adjustment proposed at the Board of Review hearing and the \$4.75 amount sought at the State level. Such conflicting claims, without explanation, undermine the weight to be given to either calculation.
65. Finally, the Petitioner’s calculation divided the proposed total partition cost from the Schedule C Unit Cost Tables (\$11,252) by the total floor area (5,588) and arrived at a

figure of \$8.05. This amount was then subtracted from the Schedule A partition cost of \$12.80 to arrive at the Petitioner's claimed adjustment of \$4.75.

66. This calculation contains an obvious math error: \$11,252 divided by 5,588 does not equal \$8.05. The Petitioner's proposed adjustment of \$4.75 is mathematically incorrect.
67. The Petitioner has therefore failed to submit probative evidence that its building does not contain components listed in the GCM-Bank model and then ascertain the cost of each missing component based on the regulations, as required by *Barth*.
68. For all the reasons above, the Petitioner failed to meet its burden in this appeal. Accordingly, no change is made to the assessment as a result of this issue.

ISSUE 3: *Whether additional economic obsolescence is warranted.*

69. The Petitioner contended that the property has experienced 54% economic obsolescence.
70. The Board of Review allowed fifty percent (50%) obsolescence for the second floor of the subject structure due to vacancy. The Respondent contended the allowance of fifty percent (50%) obsolescence for the second floor of the subject structure would yield thirteen percent (13%) economic obsolescence depreciation to the assessment for the overall structure.
71. The applicable rules governing Issue 3 are:
50 IAC 2.2-1-20
“Depreciation means loss in value from all causes. It may be further classified as follows:
(1) Physical, which refers to the loss of value caused by physical deterioration.
(2) Functional.
(3) Economic.”

50 IAC 2.2-1-40

“‘Obsolescence’ means a diminishing of a property’s desirability and usefulness brought about by either functional inadequacies or overadequacies inherent in the property itself, or adverse economic factors external to the property.”

72. Evidence and testimony considered particularly relevant to this determination include the following:

- a. The Petitioner contends economic obsolescence is warranted for the subject two-story bank because of the termination of need of the property due to actual changes in economic or social conditions. (Hume testimony).
- b. Significant reductions in space utilization have been caused by external factors relating to changes in the banking industry as a whole. (Hume testimony).
- c. A change of ownership also contributed to the reduction in space utilization. (Hume testimony).
- d. Recent trends in the banking industry that have a direct affect on space utilization are: (1) a move from performing all banking functions at a single location to use of suburban branches; (2) the use of drive-through facilities as opposed to customers walking into a bank to do business; (3) the use of ATM machines, telephones and computers to accomplish banking business as opposed to doing business with bank tellers; and (4) the consolidation of banking companies that change bank headquarters to bank branches. (Hume testimony).
- e. The subject structure represents an example of a bank facility that does not utilize space because of the changes in banking noted above. (Hume testimony).
- f. The subject bank once accommodated all bank operations such as check clearing, data processing, collections, payroll, general administration and accounting, but most of these functions are now performed in other facilities. (Hume testimony).
- g. The second floor of the bank has been abandoned except for storage. In addition, changes in the banking industry have resulted in under use of the first floor and basement of the structure. The only area of the bank in use is the front part of the first floor. (Hume testimony).
- h. The ideal modern replacement bank building would be: (1) one story reinforced concrete block with face brick; (2) three thousand (3,000) square feet of floor

area; (3) wall height of ten feet (10'), ceiling and partition heights of nine feet (9'); and, (4) having special features that are similar to the subject bank. (Hume testimony; Board's Exhibit A, attachment to the Form 131 petition, page 4).

- i. The Petitioner developed a three thousand (3,000) square foot replacement structure based on the criteria listed above that meets modern needs and compared its reproduction cost to that of the subject structure. (Board's Exhibit A, attachment to the Form 131 petition, page 4).
- j. The Petitioner contends a comparison between the reproduction costs for the ideal replacement building and the subject bank results in economic obsolescence equal to fifty four percent (54%). (Board's Exhibit A, attachment to the Form 131 petition, page 4).
- k. The basement and the second story of the subject bank have been assessed as utility storage on the property record card. (Respondent's Exhibit 2).
- l. Fifty percent (50%) obsolescence was applied to the second floor of the bank due to vacancy, which would yield thirteen percent (13%) obsolescence depreciation to the assessment for the overall structure. (Elkins and Joest testimony; Respondent's Exhibit 2).

Analysis of ISSUE 3

73. The Petitioner contends economic obsolescence depreciation is warranted in the amount of fifty four percent (54%) as a result of "significant reductions in space utilization ... caused by external factors relating to changes in the banking industry as a whole, and to changes of ownership in what was originally the headquarters of the Northside Bank." (Board's Exhibit A, attachment to the Form 131 petition, page 1). The local officials allowed thirteen percent (13%) economic obsolescence depreciation (Respondent's Exhibit 1, page 4).
74. "Depreciation" is a concept in which an estimate must be predicated upon a comprehensive understanding of the nature, components, and theory of depreciation, as well as practical concepts for estimating the extent of it in improvements being valued. 50 IAC 2.2-10-7.

75. “Obsolescence depreciation” is the percentage of reduction of value due to functional and economic causes. Obsolescence depreciation is determined independently from the physical depreciation allowance. 50 IAC 2.2-10-5(d)(16).
76. Functional obsolescence depreciation is defined as “obsolescence caused by factors inherent in the property itself.” 50 IAC 2.2-1-29.
77. Functional obsolescence may be caused by, but is not limited to, the following:
- (A) Limited use or excessive material and product handling costs caused by an irregular or inefficient floor plan;
 - (B) Inadequate or unsuited utility space; and
 - (C) Excessive or deficient load capacity.
- 50 IAC 2.2-10-7(e)(1).
78. Economic obsolescence depreciation is defined as “obsolescence caused by factors extraneous to the property.” 50 IAC 2.2-1-24.
79. Economic obsolescence may be caused by, but is not limited to, the following:
- (A) Location of the building is inappropriate for the neighborhood;
 - (B) Inoperative or inadequate zoning ordinances or deed restrictions;
 - (C) Noncompliance with current building code requirements;
 - (D) Decreased market acceptability of the product for which the property was constructed or is currently used;
 - (E) Termination of the need of the property due to actual or probable changes in economic or social conditions; and
 - (F) Hazards, such as danger from floods, toxic waste, or other special hazards.
- 50 IAC 2.2-10-7(e)(2).
80. It is incumbent on the taxpayer to establish a link between the evidence and the loss of value due to obsolescence. After all, the taxpayer is the one who best knows his business

and it is the taxpayer who seeks to have the assessed value of his property reduced.

Rotation Products Corp. v. Department of State Revenue, 690 N.E.2d 795, 798 (Ind. Tax 1998).

81. Regarding obsolescence, the taxpayer has a two-prong burden of proof: (1) the taxpayer has to prove that obsolescence exists, and (2) the taxpayer must quantify it. *Clark v. State Board of Tax Commissioners*, 694 N.E.2d 1230, 1233 (Ind. Tax 1998).
82. As discussed, the local officials allowed thirteen percent (13%) economic obsolescence depreciation, indicating the existence of obsolescence in the subject structure. Therefore, the first prong of the two-prong burden of proof is met and the Petitioner must now quantify the request for additional obsolescence.
83. Obsolescence may be quantified using generally recognized appraisal principles. *Canal Square Limited Partners v. State Board of Tax Commissioners*, 694 N.E.2d 806, 807 (Ind. Tax 1998).
84. The Petitioner asserted that “There are two basic methods of calculating economic obsolescence in this kind of situation:
 - A) Adjust all of the unneeded parts of this structure out of the value, e.g., calculate the value of excess wall height, excess floor area, and any other features that are now obsolete by the current standards of the business. The percentage of total reproduction cost attributable to those items is the obsolescence depreciation rate.
 - B) Define a replacement structure that meets modern needs and compare its reproduction cost to that of the current structure. The two methods should yield the same result.” (Board’s Exhibit A, attachment pages 1 - 2).¹

¹ Features such as “excess wall height” and “excess floor area” are inherent in the property itself. As such, they are not indications of economic (external) obsolescence, which is caused by factors extraneous to the property. 50 IAC 2.2-1-24; 50 IAC 2.2-1-29.

85. Using the second of these methods, the Petitioner offered a comparison between a proposed replacement one story banking facility and the current two story banking facility.
86. Professional authority, however, disagrees with the Petitioner's assertion concerning accepted methods of measuring economic obsolescence.
87. "There are two methods of measuring external [economic] obsolescence: (1) capitalizing the income or rent loss attributable to the negative influence; and (2) comparing comparable sales of similar properties, some exposed to the negative influence and others not." International Association of Assessing Officers Property Assessment Valuation, 173 (2nd ed. 1996).
88. Comparing the subject structure to a hypothetical replacement structure is therefore not a generally recognized method of quantifying the loss in value due to economic obsolescence.
89. Assuming *arguendo* the calculation submitted by the Petitioner was based on an acceptable method of measuring economic obsolescence, it would still be flawed.
90. The Petitioner described the manner in which the features of the hypothetical building were determined: "Based on our experience in reviewing assessments of hundreds of banks, it is our opinion that this branch is of the size and activity level that competitors are housing in buildings ranging from 2400 to 3000 square feet." (Board's Exhibit A, attachment to the Form 131 petition, page 1).
91. However, calculations purporting to quantify obsolescence must be "supported by something other than self-serving references to the quality of the decision maker." *Canal Square Ltd. Partnership v. State Board of Tax Commissioners*, 694 N.E.2d 801, 808 (Ind. Tax 1998). No additional evidence was submitted to support the Petitioner's opinion that the hypothetical structure is in fact an appropriate replacement building for comparison.

92. The Petitioner's unsubstantiated conclusions do not constitute probative evidence. *Whitley*, 704 N.E. 2d at 1119.
93. The Petitioner's replacement calculation included a partitioning adjustment of \$6.33. This figure was also unsupported and, in fact, was contradicted by testimony that the partitioning adjustment should be \$4.75. This contradiction further reduces the credibility to be given to the Petitioner's proposed base rate used when calculating the value of the hypothetical replacement facility.
94. The Petitioner did not submit probative evidence to support the quantification of economic obsolescence. The Petitioner therefore failed to meet the second prong of the two-prong test articulated in *Clark*.
95. For all the reasons above, the Petitioner failed to meet its burden in this appeal. Accordingly, no change is made to the assessment as a result of this issue.

Summary of Final Determination

Determination of ISSUE 1: *Whether the basement perimeter measurement and perimeter to area ratio (PAR) are correct.*

96. The Petitioner offered probative evidence of an error in the basement PAR measurement. The basement should be priced using a PAR of 11. There is a change in the assessment as a result of this issue.

Determination of ISSUE 2: *Whether an interior finish adjustment is warranted for partitioning.*

97. The Petitioner failed to meet its burden by presenting factual evidence establishing that an error exists. Therefore, no change is made to the assessment as a result of this issue.

Determination of ISSUE 3: Whether additional economic obsolescence is warranted.

98. The Petitioner failed to meet the second prong of the two-prong *Clark* burden regarding obsolescence claims. Accordingly, no change is made to the assessment as a result of this issue.

This Final Determination of the above captioned matter is issued this by the Indiana Board of Tax Review on the date first written above.

Chairman, Indiana Board of Tax Review

IMPORTANT NOTICE

- APPEAL RIGHTS -

You may petition for judicial review of this final determination pursuant to the provisions of Indiana Code § 6-1.1-15-5. The action shall be taken to the Indiana Tax Court under Indiana Code § 4-21.5-5. To initiate a proceeding for judicial review you must take the action required within forty-five (45) days of the date of this notice.